HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 17951 OF 2005

DATED: 10.8.2006

Between:

M/s P.S.R. Hotels Pvt. Limited and others.

… Petitioners

and

The District Collector, Tirupathi,
Chittoor District and another

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 17951 OF 2005

ORAL ORDER:

The writ petition is filed, seeking a declaration that the entire acquisition proceedings, vide the draft notification published under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') in the A.P. Gazette No. CTR-4/2000 dated 15.2.2000; the declaration under Section 6 of the Act, published in the Gazette issue No.CTR-18/2001 dated 23.2.2001, proposing acquisition of 0.03 cents in Sy.No.11/1 and 0.33 cents in Sy.No.413/1C, Tirupathi village, Tirupathi Urban Mandal, Chittoor District, has lapsed in view of the provisions of Section 11-A of the Act.

Heard the learned counsel for the petitioners, the learned Government Pleader for Land Acquisition for the 1st respondent and Sri P. Ganga Rami Reddy, learned Standing Counsel for the 2nd respondent-Tirupathi Urban Development Authority.

Indisputably, the petitioners are the owners of lands which were

acquired, pursuant to the draft notification under Section 4(1) of the Act published in the Gazette dated 15.2.2000; the 1st petitioner-company of 0.03 cents; and the 2nd and 3rd petitioners who are husband and wife own 0.33 cents in the survey numbers mentioned above. Enquiry under Section 5-A of the Act was held on 23.3.2000. The 1st petitioner objected to the acquisition and submitted objections to the 2nd respondent. Eventually, on 23.2.2001, the declaration under Section 6 of the Act was issued and notices under Sections 9 (3) and 10 of the Act on 4.6.2001.

It would appear (from the counter of the 2nd respondent) that one of the owners of other lands, which were also notified for acquisition by the impugned notification, one P. Venkata Reddy filed W.P.No.4577 of 2000 questioning the acquisition proceedings. Interim stay of dispossession was granted to him on 28.4.2000. The writ petition was however dismissed on 23.1.2003. According to this counter, the objections of some of the landowners were communicated to the beneficiary-Tirupathi Municipality; the objections were rejected on 31.7.2000 and thereafter the draft declaration under Section 6 of the Act was issued on 23.2.2001 and published on the same day. Very vaguely this counter affidavit asserts:

> *"The possession of the land could not be taken in view of the interim orders granted by this Hon'ble Court in W.P.No.4577/2000 on 28.4.2000."*

It requires to be considered that the petitioner in W.P.No.4577 of 2000 is not among the writ petitioners herein. The counter affidavit does not assert that any of the petitioners herein had filed a writ petition earlier and obtained stay of dispossession or that there was otherwise a general stay of the acquisition proceedings. The statement of the 2nd respondent in para (3) of the counter affidavit that possession of the lands (impliedly of the petitioners too) could not be taken because of the interim orders in W.P.No.4577 of 2000, is therefore misconceived. Possession of the petitioners' lands was not taken pursuant to the acquisition process, for reasons that are not discernible nor stated. It is also stated that another land owner P. Subba Reddy had filed W.P.No.553 of 2003, questioning the same acquisition notification, but it was dismissed at the stage of admission.

According to the 2nd respondent, since under Section 11-A of the Act the award has to be passed within a period of two years from the date of the draft declaration (subject to exclusion of the period during which any action or proceeding taken, pursuant to the declaration is stayed by an order of a court, the award could not be passed). The counter affidavit further states that after dismissal of W.P.No.4577 of 2000 on 23.1.2003, the answering respondent initiated further proceedings addressing the Commissioner of the Municipality for provision of funds. As the Commissioner provided funds only in August 2005, the award enquiry was processed from 3.8.2005 onwards and the

award passed on 23.12.2005. According to the 2nd respondent, since the award is passed on 23.12.2005, the award is within the stipulated time under Section 11-A of the Act.

On a critical analysis of the relevant facts, the contention urged by the 2nd respondent is fallacious, misconceived and is liable to be rejected. Section 11-A of the Act mandates that the award under Section 11 should be passed within a period of two years from the date of publication of the declaration. The declaration is dated 23.2.2001. It is neither pleaded, urged nor demonstrated before this court that either one or more of the petitioners had filed writ petitions and obtained any orders from any court, interdicting the acquisition proceedings in general or in particular or that the process of acquisition of the lands of the petitioners was interdicted by any general order passed by any court including in W.P.No.4577 of 2000 (stated to have been filed by one P. Venkata Reddy). In para (3) of the counter, it is stated that in P. Venkata Reddy's writ petition No.4577 of 2000, this court granted interim stay of dispossession on 28.4.2000, but the writ petition was dismissed on 23.1.2003. If what has been ordered by this court is stay of dispossession of P.Venkata Reddy, there was no legal impediment to proceeding with the acquisition of the lands of the petitioners, pursuant to the draft notification dated 15.2.2000 and the declaration under Section 6 of the Act dated

23.2.2001. The time consumed in the interregnum (between 28.4.2000 and 23.1.2003, the currency of the interim orders in W.P.No.4577 of 2000) is not therefore liable to be excluded under Section 11-A of the Act.

Be that as it may.

Even if the period up to 23.1.2003 is to be excluded, the respondents are required to have passed an award by 23.1.2005, two years computed from 23.1.2003. The award is admittedly passed on 23.12.2005. Therefore, in any event, the award is beyond the period permitted under Section 11-A of the Act and therefore in view of the legislative declaration, the entire proceedings for acquisition lapse, but insofar as the petitioners are concerned.

It is asserted, in a subsequent affidavit filed by the 2nd respondent dated 27.3.2006 that the 2nd and 3rd petitioners after receipt of the notice under Section 12 (2) of the Act, had received the compensation amount as per the award dated 23.12.2005 and have handed over possession of the acquired land on 25.1.2006. Insofar as the 1st petitioner is concerned, it is not pleaded or established that he had received the compensation amount at all.

The mere fact of the 2nd and 3rd petitioners receiving the compensation amount in January 2006 in respect of their lands acquired in the year 2000 and after filing of this writ petition, does not in the considered

view of this court, constitute a waiver or acquiescence by them, of the legality of the award passed on 23.12.2005 beyond the statutorily prescribed period, under Section 11-A of the Act.

In the aforesaid circumstances, the writ petition is allowed. The Award No.2 of 2005 dated 23.12.2005 passed by the 2nd respondent is quashed. The respondents-State shall be entitled to recover the amounts paid by the respondents and received by the petitioners 2 and 3, pursuant to the Award No.2 of 2005 and the petitioners shall be entitled to restoration of their possession of the lands in question, unless the State of Andhra Pradesh, within a period of three weeks from the date of receipt of a copy of this order, initiates appropriate formal and legal proceedings for acquisition afresh (by issuing a notification under Section 4 (1) of the Act) for the lands in question. If no proceedings as aforestated are initiated before the period stipulated supra, the respondents shall restore to the petitioners, possession of the lands in question. No order as to costs.

GODA RAGHURAM, J

Date: 10.8.2006
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